



U.S. Department of Justice

Immigration and Naturalization Service

Pbf

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: JAN 29 2001

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean
Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be remanded.

The petitioner is a general contractor which seeks to employ the beneficiary as a mason. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the qualifications for the position as stated in the labor certification.

On appeal, counsel argues that the petition should be approved.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. 204.5(1)(3) states, in pertinent part:

(ii) Other documentation -- (A) General. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) Skilled workers. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of a mason required two years of experience in the job offered. The director denied the petition because he determined that the petitioner had not established that the beneficiary had the requisite experience as a mason.

According to the director:

On July 07, 1994, the petitioner was advised to submit evidence to establish that the petitioner has the two (2) years experience as required on the ETA 750.

On July 25, 1994, the petitioner submitted a letter from the beneficiary's previous employer in Quazon [sic] City. This evidence indicates that the beneficiary holds six (6) years work experience as a "Mason". [sic] However, this experience was not revealed when the ETA 750 was filed; therefore, the Service cannot attest if the beneficiary held this position in Quazon [sic] City. This being the case, the petition still lacks evidence showing that the beneficiary meets the minimum work experience requirements stated on the ETA 750 at the time the request for certification was filed with DOL. Therefore, the petition cannot be approved.

The director also found that the petitioner could not include his work for the petitioner to meet the requisite experience requirement. In addition, the director implies that positions held by the beneficiary for less than two years could not be considered as well. The director did not include the letter from the beneficiary's former employer in the record of proceeding.

On appeal, counsel states:

There is no legal requirement that all of the beneficiary's experience be listed in the ETA 750. In addition, counsel states that the certificate of experience is valid on its face and uncontradicted by the record. The INS cannot capriciously reject a certificate of employment.

Counsel's argument is persuasive. The director cannot request additional information, receive it, then decline to consider it with no reason given. As counsel pointed out, the certificate of experience is considered valid on its face, absent anything in the record to contradict it. It is noted, however, that experience as a tile setter or marble installer would not constitute experience in the job described in block 13 of the Form ETA 750. It is noted that there is no requirement that all requisite experience must be met in a single position, i.e., that several positions cannot collectively satisfy the requisite employment criteria.

On appeal, counsel has raised valid issues regarding the director's decision. The director should evaluate the probity of the submitted documentation and determine if the petitioner met its burden in establishing that the beneficiary had the required experience.



ORDER: The petition is remanded to the director for further action in accordance with the foregoing.